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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,208	02/13/2002	Karen Papierniak	9066 (3225-123)	4802

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JAMES M. STOVER  
NCR CORPORATION  
1700 SOUTH PATTERSON BLVD, WHQ4  
DAYTON, OH 45479

EXAMINER

STEVENS, ROBERT

ART UNIT PAPER NUMBER

2176

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/073,208

Applicant(s)

PAPIERNIAK, KAREN

Examiner

Robert M Stevens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

#### DETAILED ACTION

1. This action is responsive to communications: **Application No. 10/073,208** amendment filed 3/21/2005 to the original application filed 2/13/2002 by Papierniak entitled "Visualization Tool for Web Analytics".
2. The Office withdraws the objections raised in the First Action on the Merits (FAOM) concerning the specification, in light of the amendment.
3. The Office withdraws the objections raised in the First Action on the Merits (FAOM) concerning the drawings, in light of the amendment.
4. The Office withdraws the claim rejections under 35 USC 112 1<sup>st</sup> and 2<sup>nd</sup> paragraphs raised in the FAOM, in light of the amendment.
5. The Office has considered Applicant's declaration/affidavit submitted under 37 CFR 131, but considers the declaration/affidavit deficient and thus unpersuasive for the reasons set forth below. See Response to Arguments section below.
6. The Office maintains the rejections of claims 8-9 and 11 under 35 USC 102(e) as being anticipated by Gruyer (with slight modifications), in light of the amendment.

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7. The Office maintains the rejections of claims 1-7 and 12-15 under 103(a) as being unpatentable over Gruyer in view of Burner (with slight modifications), in light of the amendment.

8. **This Office action has included a requirement for information under 37 CFR 1.105.** A complete reply to this Office action must include a complete reply to the requirement for information. The time period for reply to the requirement coincides with the time period for reply to this Office action.

9. Claims 1-15 are pending. Claims 1 and 8 are independent. Claim 10 has been cancelled.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. **Claims 8-9 and 11 are rejected under 35 USC 102(e)** as being anticipated by Gruyer et al (US Patent Application Publication No. 2002/0112048, filed Dec. 11, 2000,

hereafter referred to as "Gruyer"). Note that the Microsoft Dictionary, 4<sup>th</sup> Edition, Microsoft Press, Redmond WA, (c) 1999, pp. 243-244 (hereafter "MS Dictionary") has been used to supply the definition of Internet Explorer.

**Regarding independent claim 8, Gruyer discloses:**

*A web site visualization tool for web analytics, comprising:  
a graphical user interface; (Fig. 2 #200)  
a database storing historical web page and web page metric data;  
(Fig. 1 #120, 122, it being inherent that a database stores data and thus irrelevant from a patentability standpoint as to what that data represents)  
and  
a relationship engine (Fig. 1 #118) able to retrieve historical web page and web page metric data from said database (Fig. 1 #120, 122, it being inherent that a database stores data and thus irrelevant from a patentability standpoint as to what that data represents) and able to provide said web page and web page metric data (Fig. 2 #204) to said graphical user interface. (Fig. 2 #200)*

**Regarding claim 9, which is dependent upon claim 8, Gruyer further discloses:**

*wherein the graphical user interface is an html-based, XML-based or XSL-based interface. (Fig. 1 #110 and 124 showing various versions of Internet Explorer (IE) used as a GUI. IE displays HTML documents, as evidenced by the Internet Explorer definition in the MS Dictionary, pp. 243-244)*

**Regarding claim 11, which is dependent upon claim 8, Gruyer discloses:**

*wherein the retrieved web page metric data includes a count of the number of promotional click-throughs associated with the historical web page. (Fig. 5 #500)*

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. **Claims 1-7 and 12-15 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Gruyer et al (US Patent Application Publication No. 2002/0112048, filed Dec. 11, 2000, hereafter referred to as "Gruyer") in view of Burner et al. (US Patent No. 6,282,548, filed Jun. 21, 1997 and issued Aug. 28, 2001, hereafter referred to as "Burner"). Note that the Microsoft Dictionary, 4<sup>th</sup> Edition, Microsoft Press, Redmond WA, (c) 1999, pp. 243-244 (hereafter "MS Dictionary") has been used to supply the definition of Internet Explorer.

**Regarding independent claim 1, Gruyer discloses:**

*A method of analyzing web sites using a visualization tool, comprising the following steps:*

*storing web page log data concerning web pages located at a web site; (Fig. 1 #118, 120, 122 and 114)*

*analyzing the stored web page log data ([0044] re: analyzer software, it being merely a matter of obvious design choice as to the type of data being analyzed) and generating a web page metric of the web pages located at said web site; ([0044] re: producing a report, it being merely a matter of obvious design choice as to the type of data being summarized/reported upon) and*

....

However, Gruyer does not explicitly disclose:

*combining the web page metric with at least one of the web pages in a graphical user interface.*

Burner, though, discloses:

*combining the web page metric with at least one of the web pages in a graphical user interface.* (Adding supplemental information to web pages [i.e., a graphical user interface] is well known in the art as evidenced in Fig. 4 #402 and 405 [the metadata of #405 being analogous to Applicant's metric/report data])

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Burner for the benefit of Gruyer, because to do so would allow a programmer to concurrently display a web page and supplemental data (such as metadata), as taught by Burner in the Abstract. These references were all applicable to the same field of endeavor, i.e., the presentment of data ancillary to a web page, rather than merely its content.

**Regarding claim 2**, which is dependent upon claim 1, Gruyer further discloses:

*wherein the graphical user interface is an html-based, XML-based or XSL-based interface.* (Fig. 1 #110 and 124 showing various versions of Internet Explorer [IE] used as a GUI. IE displays HTML documents, as evidenced by the Internet Explorer definition in the MS Dictionary, pp. 243-244)

**Regarding claim 3**, which is dependent upon claim 1, Gruyer further discloses:

*wherein the web page metric includes promotional click-through data. (Fig. 5 #500, it being merely a matter of obvious design choice as to the data types being analyzed/reported upon)*

**Regarding claim 4**, which is dependent upon claim 1, the limitations of claim 1 have been previously addressed.

However, Gruyer does not explicitly disclose:

*wherein the graphical user interface includes a report region and at least one web page image corresponding to an entry in the report region.*

Burner, though, discloses:

*wherein the graphical user interface includes a report region and at least one web page image corresponding to an entry in the report region. (Adding supplemental information to web pages [i.e., a graphical user interface] is well known in the art as evidenced in Fig. 4 #402 and 405 [the metadata of #405 being analogous to Applicant's metric/report data])*

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Burner for the benefit of Gruyer, because to do so would allow a programmer to concurrently display a web page and supplemental data (such as metadata), as taught by Burner in the Abstract. These references were all applicable to the same field of endeavor, i.e., the presentment of data ancillary to a web page, rather than merely its content.

**Regarding claim 5**, which is dependent upon claim 4, Gruyer further discloses:



*wherein the report region includes a web page metric. (Fig. 2 #200)*

**Regarding claim 6**, which is dependent upon claim 1, the limitations of claim 1 have been previously addressed.

However, Gruyer does not explicitly disclose:

*wherein the graphical user interface includes a web page region and a web page information region.*

Burner, though, discloses:

*wherein the graphical user interface includes a web page region (Fig. 4 #402) and a web page information region. (Fig. 4 #405)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teachings of Burner for the benefit of Gruyer, because to do so would allow a programmer to concurrently display a web page and supplemental data (such as metadata), as taught by Burner in the Abstract. These references were all applicable to the same field of endeavor, i.e., the presentment of data ancillary to a web page, rather than merely its content.

**Regarding claim 7**, which is dependent upon claim 6, Gruyer further discloses:

*wherein the web page information region includes a web page metric. (Fig. 2 #200)*

**Claims 12-15** are substantially similar to claims 4-7, respectively, and therefore likewise rejected.

***Response to Declaration/Affidavit Under 37 CFR 1.131***

The declaration filed on 3/21/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the filing date of the Gruyer reference (Gruyer et al. US 2002/0112048).

The Applicant has submitted an inventor-signed declaration and a four page document labeled Appendix A (not Exhibit A), which consists of the invention disclosure record submitted to NCR (having docket No. 9066 and executed by the inventor on 12/30/99).

The Office believes the "Declaration of Karen A. Papierniak under 37 CFR 1.131" to be insufficient to overcome the Gruyer reference. The evidence submitted is insufficient to establish conception and due diligence to constructive reduction to practice (i.e., filing).

First of all, Appendix A is inadequate for demonstrating conception. Applicant needs to show a mapping of the claims to the evidence (i.e., Appendix A). Such a mapping entails a detailed discussion of how the evidence relates to the claims of the instant application.

Additionally, the evidence submitted is insufficient to establish due diligence from a date prior to the effective date of the Gruyer reference to either a constructive reduction to practice (or an actual reduction to practice). In fact, Applicant has failed to

address due diligence from prior to the filing date of the Gruyer reference to the filing date of the instant Application (10/073,208). See MPEP 715.07(a):

Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence.

In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. *Ex parte Kantor*, 177 USPQ 455 (Bd. App. 1958).

What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention.

Under 37 CFR 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See *Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947).

In view of the above, it is the Office's opinion that the presented evidence within Appendix A is insufficient proof that Applicant's asserted invention was either conceived

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or reduced to practice before the effective date (for prior art purposes) of the Gruyer reference. Therefore the Office maintains the rejections of the claims raised in the FAOM under 35 USC 102(e) and 103(a) and relying upon Gruyer.

***Requirement for Information***

14. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: The NCR Invention Disclosure Record submitted as Appendix A with a 37 CFR 1.131 Declaration states in block 5 of page 1 of 4, that the "Actual or Anticipated Date of First Product Sale, Customer Availability, or Public Disclosure" was "3Q 2000". **Is this date the "Actual" date? If not, when was the "Actual" date of "First Product Sale, Customer Availability, or Public Disclosure"?**

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

Additionally, is reminded of the requirement to disclose information material to examination of the instant application (i.e., availability of purported invention to the public).

***Response to Arguments***

15. Applicant's arguments filed 3/21/2005 have been fully considered but they are not persuasive.

Applicant's remarks on page 4 of the amendment concerning the "Drawings", pages 2-3 concerning the "Specification", and page 8 concerning the "Rejection of Claims Under 35 USC 112 1<sup>st</sup> and 2<sup>nd</sup> paragraphs" raised in the FAOM, have been addressed above.

It is respectfully noted that Applicant's amendment to the claims did not significantly change the scope of the claimed invention as a whole. As such, the Office has substantially maintained the FAOM claim rejections under 35 USC 102(e) and 35 USC 103(a) as set forth in the appropriate sections above.

Furthermore, it is respectfully noted that Applicant's Declaration/Affidavit under 35 CFR 1.131 is insufficient to overcome the Gruyer reference. Rationale has been set forth in the appropriate section above. As such, the Office has substantially maintained

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the FAOM claim rejections under 35 USC 102(e) and 35 USC 103(a) as set forth in the appropriate sections above.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. This Office action has included a requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the requirement for information. The time period for reply to the requirement coincides with the time period for reply to this Office action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M Stevens whose telephone number is (571) 272-4102. The examiner can normally be reached on M-F 6:00 - 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen S. Hong can be reached on (571) 272-4124. The current fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Additionally, the main number for Technology Center 2100 is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert M. Stevens  
Reg. No. 47,972  
Art Unit 2176  
Date: June 10, 2005

rms

  
HEATHER R. HERNDON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100